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Letter dated 12 November 2018 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to write to you, in response to your letter dated 1 November 2018, in which you invited Member States to contribute to the funding of the so-called "International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011", or "IIIM".

First and foremost, I would like to clarify that the content of my letter and its attachment cannot, in any sense, be taken as an acceptance or recognition of the so-called "IIIM" or of any of its illegitimate mandates, activities and acts.

Frankly and transparently, my Government continues to be shocked by this suspicious tendency in the United Nations to promote the so-called "IIIM" and by the desperate attempt to raise funds for it, while the United Nations itself has refrained from responding to any of the well-established legal arguments that we have raised in many official correspondence, all of which have proved beyond any doubt that the establishment of this "IIIM" constituted a flagrant violation of the provisions of the Charter of the United Nations.

I have attached to this letter a fact sheet, entitled "Wrongful Acts Can't Be Promoted or Legalized" (see annex). This fact sheet contains the legal arguments raised by the Syrian Government on many occasions, which have strongly and repeatedly revealed the fact that the non-consensual resolution 71/248 adopted by the General Assembly to establish this "IIIM" constituted a breach of the Charter and an aggression by the Assembly on the mandate of the Security Council, in which it exceeded its powers and mandates under the Charter.

My Government, proceeding from a keen awareness of the role and position of the Secretary-General, firmly believes that the time has come for the United Nations to decide, irreversibly, whether it really wants to play the role of a fair and balanced facilitator in the political process owned and led only by Syrians, without harmful and dangerous interference!

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On behalf of my Government, I invite you to re-examine and to reconsider the status of this illegal mechanism and the consequences of its illegal activities and acts on the work and credibility of the United Nations, as well as on its role in facilitating the political process in the Syrian Arab Republic. . also call upon all Member States to distance themselves from this illegal mechanism and to refrain from any connection or cooperation with it, including the contribution to its funding.

I should be grateful if you would have the present letter and its annex issued as a document of the General Assembly, under agenda item 34.

(*Signed*) Bashar **Ja'afari**
Ambassador
Permanent Representative

Annex to the letter dated 12 November 2018 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General

"Wrongful Acts Can't Be Promoted or Legalized"

The so-called "IIIM" is a terrible example of political and financial polarization and violation of the provisions of the Charter of the United Nations

12 November 2018

- In November 2016, the Permanent Missions of Liechtenstein and Qatar exploited the frenetic and provocative atmosphere in the United Nations after the Syrian Government and its allies launched the military operation that ended with the liberation of Aleppo from the terrorist armed groups, foremost among them the designated terrorist entity of "Al-Nusrah Front" (QDe.137). It is well known that the highest-ranking official in Qatar's ruling family has admitted on several occasions that Qatar opposes the United Nations designation of "Al-Nusrah Front" as a terrorist entity. The Qatari Minister for Foreign Affairs stated frankly after the liberation of Aleppo that his Government would not give up and would continue to assist and arm "rebels" in Syria and that his Government was confident of the ability of those terrorists to regain control of Aleppo! The former Prime Minister and Foreign Minister of Qatar, Hamad Bin Jassim, announced in an interview with the British Broadcasting Corporation, in November 2017, that "$137 billion had been squandered by some governments in attempts to overthrow the Assad government since the beginning of the war." The Government of Qatar has provided enormous financial funding to the terrorist organization "Al-Nusrah Front", either directly or under the guise of raising funds through Qatari charities and associations linked to the ruling family, or through the payment of hundreds of millions of dollars of ransom to "Al-Nusrah Front" for the release of foreign and Arab abductees and hostages.

- When the Qatari Government felt at that time that the positions of "Al-Nusrah Front" and the other terrorist groups associated with it had come under serious threat in the city of Aleppo, it decided to resort to the General Assembly. In this context and due to ambiguous financial and banking relations between the two countries, Qatar used the Liechtenstein Permanent Mission's help in the autumn of 2016 to prepare a draft resolution to be submitted to the Assembly in order to establish the so-called "IIIM" and exert more political pressure and blackmail against the Syrian Government and its allies.

- Needless to say, the Permanent Missions of Liechtenstein and Qatar have not adhered to the principles of the Charter of the United Nations or the existing rules of procedure within the framework of the United Nations, and they did not make any kind of communication or consultation with the concerned Member State, namely, the Syrian Arab Republic. On the contrary, they went through an exclusionary process in which political and financial polarization was strongly evident.

- Although the Syrian Permanent Mission has resorted to United Nations rules of procedure to clarify the illegality of this suspicious "initiative" and to explain the serious political backgrounds behind it, the United Nations has succumbed to the will of the sponsors of the draft resolution and set a plenary session of the General Assembly for presenting and taking action on the draft resolution.

- However, on 21 December 2016, the General Assembly adopted the non-consensual resolution 71/248 by a slim majority, which led to the establishment of the so-called "IIIM".

How did the General Assembly violate the Charter and encroach on the mandates of the Security Council?

- The non-consensual General Assembly resolution 71/248, which led to the establishment of this "IIIM", constituted a breach of Article 12 of the Charter, which reads, "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests". It was, and still is, well known that the Council is still fully engaged in its responsibilities and mandates in the Syrian case, and the Assembly therefore has no mandate to take any action in respect of this case.

- The General Assembly does not fundamentally have the power or the mandate to establish such a mechanism; under the provisions and principles of the Charter, that prerogative belongs solely to the Security Council. The resolution therefore sets a dangerous legal precedent: it violates the Charter and endorses a practice that deviates from the working methods of the United Nations. Since its foundation, the Assembly had never established such a mechanism in any of its resolutions. The Assembly can, in some cases, request the Secretary-General to negotiate on specific issues with the relevant Member State. However, the prior consent of the Member State remains a key element in such situations. The resolution was clearly adopted without the consent of the Syrian Arab Republic and despite of its strong objections.

- Moreover, Articles 10, 11, 12 and 22 of the Charter unequivocally define the mandates of the General Assembly. Based on these articles, the Assembly does not have the authority or the mandate to establish any investigative or judicial organ or such "mechanism", since that mandate was vested exclusively in the Security Council, in accordance with the provisions and principles of the Charter. Consequently, Assembly resolution 71/248 was a grave legal precedent in the adoption of an abnormal practice within the framework of the United Nations.

- The so-called "IIIM" has been granted a wide range of powers under resolution 71/248, which is the prerogative of the Office of the General Prosecutor as the national judicial organ of each State. Originally, the Charter did not confer upon the General Assembly any mandate or jurisdiction relating to prosecutions, criminal investigations or the support of a criminal investigation. On this legal basis, the Assembly does not have the power to create an organ with powers that it does not already have, nor does it have the inherent authority to establish such a body. It is crucial to refer here to an alarming fact concerning the practices of the Chair of the so-called "IIIM", when she misused her first and subsequent reports to misinterpret Assembly resolution 71/248 in order to grant herself and her assistants broad powers and mandates that are not included in the non-consensual resolution itself.

- It is well known that the basic legal rule governing the provision of legal technical assistance by the United Nations to any Member State is the existence of a request by the concerned State. In the event of the establishment of this illegal mechanism, there was no request submitted by the Government of the Syrian Arab Republic for such assistance. On the contrary, the establishment of this "IIIM" was carried out through an exclusionary and non-transparent process

led by two permanent missions, which have already taken an unbalanced and dishonest attitude towards the situation in the Syrian Arab Republic, to the point of supporting and financing terrorism and tolerating its supporters. Based on the foregoing, the non-consensual General Assembly resolution 71/248 has breached the Charter, in particular Article 2.

- To further prove these legal arguments, it is imperative to look closely into the experience of the Security Council in the adoption of its resolution 2379 (2017), in which the Council mandated the Secretary-General to "establish an Investigative Team, headed by a Special Adviser, to support domestic efforts to hold ISIL (Da'esh) accountable by collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes". Relevant correspondence among the Secretary-General, the Council and the Government of Iraq illuminate that the Secretary-General was keen and obliged under the Charter to consult with the Iraqi Government to establish the standards and rules of the conduct of the investigation team prior to the adoption of a Council resolution by consensus.

  This is just an example that confirms, beyond any doubt, that double standards and selectivity were the only basis on which the so-called "IIIM" was established, in violation of the Charter and through an aggression by the General Assembly on the mandate of the Security Council.

- Regarding the letter of the Secretary-General dated 1 November 2018, in which he invited Member States to contribute to the funding of the so-called "IIIM", this letter does not comply with the Charter or the mandates of each body of the Organization. Moreover, this request from the Secretary-General was wrongfully based on another non-consensual resolution of the General Assembly, 72/191, entitled "Situation of human rights in the Syrian Arab Republic", on the basis of the Third Committee report at its seventy-second session. The Assembly, in operative paragraph 35 of that non-consensual resolution, "calls upon the Secretary-General to include the necessary funding for the Mechanism in his next budget proposal".

  Needless to say, and based on the well-established procedures in the framework of the main committees, this call should have been referred to the Fifth Committee to determine the programme budget implications for that resolution. Therefore, the process has not fulfilled the requirements of the Member States' consent regarding an important change to the nature of the funding of this "IIIM" to be included in the regular budget.

- The legal violations committed by the General Assembly when non-consensual resolution 71/248 was adopted have accumulated, which entail many consequences that make this mechanism primarily an illegal entity, which cannot be accepted or allowed to carry out any activity under the umbrella of the United Nations. These consequences could be summarized as following:

  (a) The so-called "IIIM" cannot be considered as a subsidiary body established by the General Assembly. Consequently, no decisions can be taken by the Secretary-General to appoint a Chair or Vice-Chair of this "International, Impartial and Independent Mechanism", and no "secretariat" can be allocated to it;

  (b) This "IIIM" cannot be granted any legal status;

  (c) The so-called "IIIM" cannot have the capacity to conclude agreements with Member States and other entities;

  (d) The United Nations may not accept voluntary contributions or budget allocations to support the establishment and functioning of such a mechanism;

(e) Based on all the above, any information or evidence collected, consolidated, preserved and analysed by this "IIIM" will be ineligible for future criminal proceedings, bearing in mind that its establishment was a highly politicized act without any legal dimension.

Political considerations related to the situation in the Syrian Arab Republic

- The situation in the Syrian Arab Republic is now at a delicate stage. The political process under the auspices of the United Nations is moving forward, but with caution and fragility, because of the insistence of some Governments that have supported chaos and terrorism in Syria, on interfering in Syrian internal affairs and placing more pressure on the Syrian Government and its allies in their war on global terrorism embodied by "Daesh", "Al-Qaida", "Al-Nusrah Front" and other terrorist groups affiliated with them.

- It became a fact that the Governments of Member States that are sponsoring, financing and promoting this illegal "IIIM" and seeking to provide it with fabricated evidence and false witnesses are the same Governments that are obstructing the political solution in Syria and that have been supporting terrorism in it from day one. Moreover, some of these countries' banking institutions are carrying out money-laundering operations, originating from Qatari gas and oil deals and being used to finance terrorism and arms deals for terrorist armed groups.

- It is essential for the United Nations to preserve its neutrality and credibility as a facilitator of the political process in Syria and not to be subject to political and financial pressure and polarization practices of the Governments of some Member States, under the pretext of achieving justice in Syria. These Governments openly declare today that they will hinder the return of Syrian refugees and displaced persons to their homes and will prevent funding for reconstruction in Syria until their own political agendas are achieved in Syria.

- The Government of the Syrian Arab Republic has the full capability, with its legal and judicial institutions, to achieve justice and accountability without external and destructive interference. Member States should be deeply aware of the grave legal and political implications of the tendentious attempts to promote this "IIIM". Otherwise, it would be a dangerous legal precedent that has manipulated international law and its principles and evoked serious controversial concepts such as the "global criminal jurisdiction", until it becomes a model that could be applied to other cases or countries.

To conclude

- The Syrian Arab Republic is fully confident of its legal and political position regarding the illegality of the so-called "IIIM" and the basis for its establishment. The Syrian Government strongly believes that neither the United Nations nor the mechanism and the Member States that support and promote it will be able to stand up to these legal arguments based on the Charter and international law. Therefore, the mechanism will remain an aberrant illegal organ, born dead and will remain dead.